

**REMARKS**

**I. Status of Claims**

Claims 50-68 are currently pending. Claims 50 and 68 have been amended herein to recite that the claimed composition does not comprise an additional ingredient chosen from functionalized organic polymers, functionalized silicone polymers, and precursors thereof. Support for the above amendment can be found in the specification as originally filed. See, e.g., page 13, paragraph [032] and page 15, paragraph [038] of the present specification, which recite that the term "organometallic sol," as used in the instant application, refers to the mixture of an organometallic compound and its co-solvent, and that the organometallic sol can be used without further modification. Further, Applicants specifically note that although the specification discloses the use of various conventional additives, including organic compounds and polymers, it is clear that the addition of such ingredients is **optional**.

According to M.P.E.P. § 2173.05(i), "[a]ny negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims," citing *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977). Here, the present amendment merely excludes from the claims optional components positively recited in the specification. Thus, the present amendment falls squarely within the holdings of *Johnson*. Accordingly, Applicants respectfully submit that no issue of new matter is raised by this amendment.

**III. Rejection under 35 U.S.C. § 102(e)**

Claims 50-68 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,352,699 to Mondet et al. ("Mondet").

According to the Examiner, formula 1A of Mondet is the same compound claimed in the present application and "reads on the claimed method of 'protecting the hair' since the patent discloses that even after several washes using water and shampoo, the initial waviness of the hair is retained." Office Action at 3. The Examiner further states that "application of the compound to the keratin (nail) is [the] same, therefore the method claimed in claim 53-59 and the method claimed in claim 69 [sic, claim 68] in the body of the claim ['effective to reduce the brittleness of the human nails'] is inherent." *Id.* Applicants respectfully disagree.

Mondet discloses a cosmetic or dermatological composition comprising **at least** an organometallic compound (which may have the formula  $M(OR_1)_n$ ) and "**at least one** functionalized organic polymer or a precursor of said polymer, or **at least one** functionalized silicone polymer or a precursor of said polymer." Mondet, column 2, lines 33-50 and claims 1-25 (emphasis added). Further, all of the representative examples of Mondet illustrate the use of a functionalized organic or silicone polymer, or precursor of a functionalized organic or silicone polymer in combination with the organometallic compound. Mondet, columns 8-10, examples 1-6.

Present independent claims 50 and 68 however, recite, *inter alia*, "[a] method of protecting and/or strengthening a keratin material comprising applying to said keratin material a composition comprising at least one organometallic compound... wherein said composition **does not comprise** an additional ingredient chosen from

functionalized organic polymers, functionalized silicone polymers, and precursors thereof." (emphasis added). As Mondet requires the presence of **both** a functionalized organic/silicone polymer or precursor thereof **and** an organometallic compound, Mondet fails to teach each and every element of the present claims, which now require the opposite, i.e., that the composition does **not** contain the functionalized additional ingredient. Thus, there can be no anticipation under § 102. Accordingly, Applicants respectfully request that this rejection be withdrawn.

#### IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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By: 

Thalia V. Warnement  
Reg. No. 39,064